

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CHARLES LEE BRANDON,

Petitioner,

Case No. 07-20551

Honorable Thomas L. Ludington

v.

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION,
DENYING PETITIONER'S MOTION TO VACATE SENTENCE**

On September 15, 2008, Petitioner Charles Lee Brandon pled guilty to one count of distributing less than 5 grams of crack cocaine in violation of 21 U.S.C. § 841(a)(1) and (b)(1). Because of two previous felony drug convictions, he was sentenced to a prison term of 262 months. Petitioner then came before this Court with a habeas petition pursuant to 28 U.S.C. § 2255, claiming that his trial counsel was ineffective and that the career offender enhancement was "erroneous."

On October 2, 2012, Magistrate Judge Charles E. Binder issued a report recommending that Petitioner's motion be denied. ECF No. 54. No objections were filed, and on October 23, 2012 the report and recommendation was adopted. ECF No. 55. Then, two days later, Petitioner filed a motion requesting an extension of time to file objections. He claimed he did not receive the magistrate judge's report until October 12 and that an additional 30 days were necessary to respond with his objections. The Court then vacated the order adopting the report and recommendation, and provided Petitioner until November 16, 2012 to lodge his objections.

As of today's date, no objections have been filed. Petitioner did not file objections within fourteen days after the magistrate judge issued his report, and he did not file objections when granted an additional four weeks to do so. Further, in the two filings he has made since receiving the report, Petitioner has never mentioned what his objections would be. The election to not file objections to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Additionally, Petitioner's failure to object to the magistrate judge's Report and Recommendation constitutes a waiver of his right to appeal. *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). *See also United States v. Campbell*, 261 F.3d 628, 631–32 (6th Cir. 2001) (the defendant waived his right to appeal by failing to file objections to magistrate judge's Report and Recommendation); *Arn*, 474 U.S. at 155 (upholding 6th Circuit practice against due process challenge). Therefore, a certificate of appealability is not warranted in this case.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 54, is **ADOPTED**.

It is further **ORDERED** that Petitioner's motion to vacate sentence, ECF No. 51, is **DENIED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

Dated: November 20, 2012

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail, and on Charles Lee Brandon #41876-039, Edgefield FCI, P.O. Box 725, Edgefield, SC 29824, on November 20, 2012.

s/Tracy A. Jacobs
TRACY A. JACOBS